U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536

[redacted]

B9

FILE: [redacted] Office: Vermont Service Center Date: NOV 29 2000
EAC 00 042 51269

IN RE: Petitioner:
Beneficiary: [redacted]

Public Copy

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

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DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. A brief was submitted by counsel subsequent to the appeal but was not included in the record of proceedings prior to the decision of the Associate Commissioner. The case will, therefore, be reopened. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a native and citizen of Colombia who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition after determining that the petitioner failed to establish that she: (1) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; and (2) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child.

Upon review of the record of proceeding, the Associate Commissioner concurred with the director's conclusion and denied the petition on September 13, 2000. Counsel, however, submitted a brief subsequent to the appeal and was received by the Service on May 31, 2000, but was not included in the record of proceeding prior to the decision of the Associate Commissioner.

In her brief, counsel states that prior to filing the appeal, the petitioner had no legal advisor to instruct her on how she could best represent her claim. Counsel further states that because the petitioner is not fluent in English and relied on translators in her present case, there are some translation errors in the submission. Counsel submits additional evidence to establish eligibility for the benefits sought.

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

> [T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

> (i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
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> (iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse

may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

In his brief, counsel states that the petitioner was injured by her husband in April of 1999, she never stated in any of the papers that she was battered in July, and that July was when she was finally able to leave her husband. She further states that the police report of November 1999 was made after the petitioner left her husband and was verbally threatened by him.

Counsel submits: (1) a statement dated May 22, 2000 from the petitioner recounting dates of incidents of abuse; (2) a police report dated January 27, 1999 filed against her husband; (3) psychological evaluation from [redacted], Certified Social Worker, Victim Services; (4) two letters from [redacted] Domestic Violence Counselor, Victim Services; (5) a letter from [redacted] stating that the petitioner was under his care in April 1999 after receiving injuries to the face, and "as result of the injuries, she has a fracture of the tip of the nose;" (6) a letter from [redacted] Dental America stating that the petitioner was seen at the office on October 20, 1997, and that "an extraction of tooth #15 was performed;" (7) revised letters from [redacted] and [redacted] claiming that they are witnesses of violence perpetrated on the petitioner by her spouse; (8) an order of protection effective until July 11, 2000; (9) an order of protection effective until July 11, 2003, furnished subsequent to the brief.

As provided in 8 C.F.R. 204.2(c)(2), the Service will consider any credible evidence relevant to the petition. Documentary proof of non-qualifying abuse may be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred. Further, a self-petitioner who has suffered no physical abuse is not precluded from a finding of eligibility for the benefit sought. As defined in 8 C.F.R. 204.2(c)(1)(vi), the phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Based on the evidence in the record, including evidence furnished on appeal to support her claim of abuse, it is concluded that the petitioner has furnished sufficient evidence to establish that she was the subject of extreme cruelty as defined in 8 C.F.R. 204.2(c)(1)(vi).

The petitioner has, therefore, overcome this portion of the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

In his brief, counsel asserts that the petitioner and her family will suffer extreme hardship if she returns to Colombia. She further asserts that the country conditions in Colombia at this time are very severe; that the petitioner fears for her physical safety; she has good reason to believe that she will be poverty-stricken; she will be undergoing counseling in the United States and her return, coupled with the stress of the economic situation as well as her fear for her physical safety, would interrupt her ability to heal emotionally from her experiences from her husband; her parents and two siblings are residing in the United States, and she has no one but her other sister in Colombia; she has been away for more than four years; her emotional and economic support network is here in the United States; and her return to Colombia would be physically, economically and emotionally harmful to her.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). Further, the loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, cultural readjustment, or the fact that economic and educational opportunities are better in the United States than in the alien's homeland do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

Counsel submits a letter from the petitioner's parents indicating that they came to the United States to visit their children and "also came to this country trying to avoid the terrible situation that is facing our country Colombia." Counsel also submits a copy of the 1999 U.S. Department of State Country Report for Colombia, and the CIA 1999 World Factbook on Colombia. Counsel states that based on the State Department Report, there is longstanding and widespread internal armed conflict and rampant violence, both political and criminal, and that the petitioner fears for her physical safety because she is a prime target for being kidnapped by the guerilla forces in Colombia as a person returning from the United States with family members living in the U.S.

The petitioner, however, has not established any specific relationship between her return to Colombia and the manner in which these conditions would affect her, and whether living in a country where violence exists will subject her to such violence, or that the country reports furnished apply directly to her situation. Nor is there evidence that she is the prime target by the guerilla forces as claimed.

While counsel states that the petitioner's family will also suffer extreme hardship if she returns to Colombia, the petitioner must demonstrate more than the existence of mere hardship because of family separation. Further, as provided in 8 C.F.R. 204.2(c)(1)(viii), hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioner's removal would cause extreme hardship. Furthermore, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996). In the petitioner's case, removal from the United States would result not in the severance of family ties but rather in the reunification of her family residing in Colombia. The petitioner has not established that she is not able to receive support from family members residing in Colombia. It is noted that although the petitioner's parents are in the United States, they claim that they are here as visitors and that they are visiting their children here.

While counsel states that Colombia suffered a record high unemployment rate in 1999, she has not established that the petitioner would be unable to find employment, or would be unable to pursue her occupation or comparable employment upon her return to her country. Furthermore, the petitioner has not established that she has a medical or psychological condition that cannot be treated in Colombia or that she is even presently receiving treatment and care for medical or psychological condition, the

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seriousness of the petitioner's health, whether her presence in the United States is vital to her medical and psychological needs, and that her medical and psychological needs cannot be met in Colombia. Neither the articles nor other documentary evidence furnished reflect that the petitioner would not be treated properly in her country due to economical condition and lack of medical facilities.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to herself, or to her child.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

Accordingly, the decision of the Associate Commissioner dated September 13, 2000 will be affirmed.

ORDER: The decision of the Associate Commissioner is affirmed.